



MAINE HUMAN RIGHTS COMMISSION

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April 20, 2010

[REDACTED] (Scarborough)

V.

[REDACTED] (Reading, PA)

I. Complainant's Charge:

[REDACTED] alleges that [REDACTED] discriminated against him on the basis of age (47) by terminating his employment.

II. Respondent's Answer:

██████████ did not respond to the charge of discrimination and did not deny discrimination alleged by ██████████

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: June 21, 2010.
- 2) Date complaint filed with the Maine Human Rights Commission: October 6, 2010.
- 3) Respondent employs more than 15 people and is subject to the Maine Human Rights Act, the Age Discrimination in Employment Act, as well as state and federal employment regulations.
- 4) Complainant is represented by [REDACTED]. Respondent is not represented.
- 5) Investigative methods used: A review of the Charge of Discrimination. Based on this review, this complaint has been identified for a brief Investigator's Report. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of reasonable grounds or no reasonable grounds in this case. (Note:

Respondent did not respond to the Charge of Discrimination despite confirming receipt of the Charge and therefore made no defense.)

IV. Development of Facts:

- 1) The parties in this case are as follows:
 - a) Complainant worked for Respondent as a branch manager in sales since 2001 and was 47 years old at the time of his termination on June 21, 2010.
 - b) "District Manager" was the district manager for Maine and New Hampshire and was Complainant's direct supervisor beginning in 2007.
- 2) Complainant provided the following:
 - a) In April of 2009, District Manager created an "action plan" for him in which he set sales goals for him to achieve in six months. He achieved these goals. District Manager then established another 6-month plan in April of 2010, this time setting unrealistic sales goals. He did his best to achieve these goals and ended up working 65 to 70 hours per week.
 - b) On June 21, 2009 he met with District Manager who told him that he had not reached the sales goals in the action plan. He disagreed with District Manager and pointed out that he was ranked fourth out of approximately 20 sales personnel in the Northeast in new and added revenues. District Manager responded, "We just feel like we need new blood." He was then terminated.
 - c) He was replaced with a relatively inexperienced branch manager in his twenties. Respondent has terminated at least three other sales personnel in the Northeast who were between 40 and 50 years old and replaced them with younger managers. He was discriminated against on the basis of age.

V. Analysis:

- 1) The Maine Human Rights Act requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Human Rights Act provides that it is unlawful based on age to terminate an employee. 5 M.R.S.A. § 4572(1)(A).
- 3) Because there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). See *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).

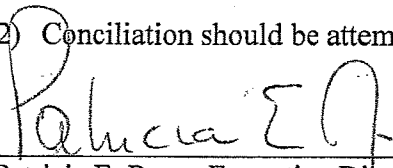
- 4) First, Complainant establishes a prima-facie case of unlawful age discrimination by showing that: (1) he performed his job satisfactorily, (2) his employer took an adverse employment decision against him, (3) his employer continued to have his duties performed by a comparably qualified person or had a continuing need for the work to be performed, and (4) those who continued to perform Complainant's job duties were a substantially different age than Complainant. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1st Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1st Cir. 1990); *cf. City of Auburn*, 408 A.2d at 1261; *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312-13 (1996) (federal ADEA).
- 5) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet his overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.
- 6) In order to prevail, Complainant must show that he would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.
- 7) Here, [REDACTED] establishes a prima-facie case of discrimination by showing that he performed his job duties satisfactorily, he was terminated and he was replaced with someone significantly younger (Respondent does not deny any of these claims made by Complainant).
- 8) Respondent did not articulate a legitimate, nondiscriminatory reason for terminating Complainant and is therefore liable for age discrimination.

VI. Recommendation:


For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

Investigator's Report E10-0500

- 1) There are **Reasonable Grounds** to believe that [REDACTED] discriminated against [REDACTED] on the basis of age by terminating him.
- 2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).



Patricia E. Ryan, Executive Director



Angela Tizon, Investigator